

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA

GOLDA MARIE TROYCHECK,

Plaintiff,

-vs-

ANDREW M. SAUL,¹
COMMISSIONER OF SOCIAL SECURITY,

Defendant.

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Civil Action No. 18-1419

AMBROSE, Senior District Judge

MEMORANDUM OPINION

Pending before the court are Cross-Motions for Summary Judgment. [ECF Nos. 21 and 25]. Also pending is a Motion to Remand that Plaintiff filed seeking remand on the grounds that the ALJ was an unconstitutionally appointed officer pursuant to Lucia v. S.E.C., 138 S. Ct. 2044 (2018). [ECF No. 7]. Defendant filed a Response in Opposition to the Motion to Remand. [ECF No. 17]. After careful consideration of the submissions of the parties, and based on my Opinion set forth below, I am granting Plaintiff's Motion to Remand [ECF No. 7] and denying both Summary Judgment Motions [ECF Nos. 21, 25] as moot.

Plaintiff brought this action for review of the final decision of the Commissioner of Social Security denying her application for disability insurance benefits pursuant to the Social Security Act. Administrative Law Judge ("ALJ"), Brian Crockett, held a hearing on May 3, 2017. [ECF No. 16-4]. On August 7, 2017, the ALJ found that Plaintiff was not disabled under the Act. [ECF No. 16-3, at 31-51]. After exhausting all administrative remedies, Plaintiff filed the instant action with this court.

¹ Andrew M. Saul was sworn in as Commissioner of Social Security on June 18, 2019, replacing Acting Commissioner, Nancy A. Berryhill.

In her Motion to Remand, Plaintiff argues that the ALJ was an unconstitutionally appointed officer, pursuant to Lucia v. S.E.C., 138 S. Ct. 2044 (2018).² This issue was stayed pending the Court of Appeals' decision in several cases, including Cirko v. Berryhill, 948 F. 3d 148 (3d Cir. 2020), and the case was administratively closed until such time. [ECF No. 29]. The stay was continued pending the exhaustion of pertinent appellate proceedings. [ECF No. 33]. Presently, Defendant has filed a Status Report, stating that it will not seek Supreme Court review of Cirko, and disavowing an argument that Cirko is inapplicable here. [ECF No. 34, ¶13]. As a result, I have reopened the case and will lift the stay and grant the pending Motion for Remand. [ECF No. 7].

In Lucia, the Supreme Court held that ALJs of the Securities and Exchange Commission must be appointed by the President, a court of law, or the Department head. Lucia, 138 S. Ct. at 2053. In Cirko, our Court of Appeals determined that a Social Security claimant is not required to exhaust her administrative remedies before raising an appointments clause issue with the District Court. Cirko, 948 F. 3d at 152, 155. Pursuant to Lucia and Cirko, the Court concludes that Plaintiff is entitled to have all claims adjudicated by a constitutionally appointed ALJ other than the ALJ who presided over the prior hearing. See id. at 159-60; Bauer v. Saul, No. 19-2563, 2020 WL 1955595, at *2 (E.D. Pa. Apr. 23, 2020). Consequently, remand is warranted. Because the hearing on remand will be conducted de novo. I do not need to address the substantive issues raised in the parties' summary judgment motions, and those motions will be denied as moot.

An appropriate order shall follow.

² Following Lucia, on July 16, 2018, the Acting Commissioner of Social Security appointed Defendant's ALJs in accordance with the Appointments Clause, United States Constitution Art. II, § 2, cl. 2. This action had no retroactive effect. Flynn v. Saul, No. 19-0058, 2020 WL 509164, at *2 (E.D. Pa. Jan. 30, 2020).

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AMBROSE, Senior District Judge

ORDER OF COURT

THEREFORE, this 3rd day of June, 2020, it is ordered that the stay in this case is lifted and Plaintiff's Motion to Remand [ECF No. 7] is granted.

It is further ordered that Plaintiff's Motion for Summary Judgment [ECF No. 21] and Defendant's Motion for Summary Judgment [ECF No. 25] are denied as moot.

It is further ordered that the decision of the Commissioner of Social Security is hereby vacated and the case is remanded for further administrative proceedings consistent with the foregoing opinion.

BY THE COURT:

s/ Donetta W. Ambrose
Donetta W. Ambrose
United States Senior District Judge